

3 FAM 5000 LABOR-MANAGEMENT RELATIONS

3 FAM 5100 GENERAL

3 FAM 5110 GENERAL PROVISIONS

(TL:PER-368; 04-20-1999)

3 FAM 5111 AUTHORITY

(TL:PER-238; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

These regulations fulfill the requirements of chapter 10 of the Foreign Service Act of 1980 (the Act) and chapter 71 of the Civil Service Reform Act of 1978 (5 U.S.C. 71) (the CSRA).

3 FAM 5112 PURPOSE

(TL:PER-238; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

These regulations state the policies and prescribe the procedures for conduct of labor-management relations for the Foreign Service and Civil Service employees of the Department of State.

3 FAM 5113 DEFINITIONS

3 FAM 5113.1 Collective Bargaining

(TL:PER-238; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

Collective bargaining is the performance of the mutual obligation of the management representative of the Department and of the exclusive representative of employees to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting employees, and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but this obligation does not compel either party to agree to a proposal or to make a concession.

3 FAM 5113.2 Conditions of Employment

(TL:PER-368; 04-20-1999)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

Conditions of Employment are the personnel policies, practices, and matters, whether established by regulations or otherwise, affecting working conditions, but do not include policies, practices, and matters:

- (1) Relating to political activities prohibited abroad or prohibited under 5 U.S.C. 73, subchapter III;
- (2) Relating to the designation or classification of any position;
- (3) To the extent such matters are specifically provided for by Federal statute; or
- (4) Relating to *U.S.* Government-wide or multi-agency responsibility of the Secretary affecting the rights, benefits, or obligations of individuals employed in agencies other than those which are authorized to utilize the Foreign Service Personnel System.

3 FAM 5113.3 Confidential Employee

(TL:PER-238; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

A Confidential Employee is an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations.

3 FAM 5113.4 Employee

(TL:PER-368; 04-20-1999)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

An employee is:

- (1) A Civil Service employee currently employed by the Department of State;
- (2) A member of the Foreign Service who is a citizen of the United States, wherever serving; or
- (3) A former Civil Service employee or member of the Foreign Service as described in *item (1) or (2)* above whose employment has ceased because of an unfair labor practice and who has not obtained any other regular and substantially equivalent employment, as determined under prescribed regulations.

3 FAM 5113.5 Exclusive Representative

(TL:PER-238; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

An exclusive representative is any labor organization which is certified as the exclusive representative of employees.

3 FAM 5113.6 Labor Organization

(TL:PER-238; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

A labor organization is an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose dealing with the Department concerning grievances and conditions of employment.

3 FAM 5113.7 Management Official

(TL:PER-368; 04-20-1999)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

A management official is an employee who:

- (1) Is a chief of mission or principal officer;
- (2) Is serving in a position to which appointed by the President, by and with the advice and consent of the Senate, or by the President alone;
- (3) Occupies a position which in the sole judgment of the Secretary is of comparable importance to the offices mentioned in 3 FAM 5113.7 *items* (1) and (2);
- (4) Is serving as a deputy to any individual described by 3 FAM 5113.7 *items* (1), (2), and (3); and
- (5) Is assigned to carry out functions of the Inspector General of the U.S. Department of State and the U.S. Information Agency, including the Broadcasting Board of Governors.
- (6) Is engaged in the administration of this subchapter or in the formulation of the personnel policies and programs of the Department.

3 FAM 5113.8 Panel

(TL:PER-368; 04-20-1999)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

The types of panels are:

Foreign Service	The Foreign Service Impasse Disputes Panel
Civil Service	The Federal Service Impasses Panel

3 FAM 5113.9 Person

(TL:PER-238; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

A person is an individual, a labor organization, or an agency.

3 FAM 5113.10 Supervisor

(TL:PER-238; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

A supervisor is a Civil Service employee who has the authority in the interest of the Department to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not routine or clerical in nature, but requires the consistent exercise of independent judgment.

3 FAM 5114 GENERAL POLICY

3 FAM 5114.1 General

(TL:PER-368; 04-20-1999)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

The Department fully supports and is guided by the findings of the Congress, that:

(1) Experience in both private and public employment indicates that the statutory protection of the right of workers to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them:

- Safeguards the public interest;
- Contributes to the effective conduct of public business; and
- Facilitates and encourages the amicable settlement of disputes between workers and their employers involving conditions of employment;

(2) The public interest demands the highest standards of performance by members of the Service and the continuous development and implementation of modern and progressive work practices to facilitate improved performance and efficiency; *and*

(3) The unique conditions of Foreign Service employment require a distinct framework for the development and implementation of modern, constructive, and cooperative relationships between management officials and organizations representing members of the Service.

Therefore, labor organizations and collective bargaining in the Department are in the public interest and are consistent with the requirement of an effective and efficient government.

3 FAM 5114.2 Status of Prior Agreements, Policies, Regulations, Procedures, and Decisions

(TL:PER-238; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. Nothing contained in chapter 10 of the Act or chapter 71 of the Civil Service Retirement Act (CSRA), precludes the renewal or continuation of any exclusive recognition, or lawful agreement between the Department and the exclusive representative of its employees which is entered into before the effective date of the Act or the CSRA.

b. Policies, regulations, and procedures established under, and decisions issued under, Executive Order 11636 or under any other executive order, as in effect on the effective date of the Act, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provision of the Act or the CSRA or by regulations or decisions issued pursuant to the Act or CSRA or applicable judicial decisions.

c. The regulations and decisions of the Foreign Service Labor Relations Board (FSLRB), the General Counsel of the Federal Labor Relations Authority, the Federal Service Impasses Panel, the Foreign Service Impasse Disputes Panel, and final judicial decisions rendered pursuant to chapter 10 of the Act or chapter 71 of the CSRA are controlling.

3 FAM 5115 EMPLOYEE RIGHTS

3 FAM 5115.1 General

(TL:PER-368; 04-20-1999)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

Every employee has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal. Neither an employee nor an applicant for employment shall be required as a condition of employment, assignment, promotion, or retention, to join or refrain

from joining any labor organization. Each employee shall be protected in the exercise of such right. Except as otherwise provided, such right includes the right:

(1) To act for a labor organization in the capacity of a representative and, in that capacity, to present the views of the labor organization to the Secretary and other officials of the U.S. Government, including the Congress, or other appropriate authorities; and

(2) To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees.

3 FAM 5115.2 Conflict or Apparent Conflict of Interest

(TL:PER-238; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. Nothing in this subchapter shall authorize participation in the management of a labor organization by a Civil Service supervisor, management official, a confidential employee, or any other employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official functions of such management official or such employee.

b. For Foreign Service, this includes any individual who has served as a management official or confidential employee during the preceding two years. Service as a management official or confidential employee is also prohibited on the part of any individual having participated in the management of the labor organization for purposes of collective bargaining or having acted as a representative of a labor organization during the preceding two years.

c. For purposes of this section, the term "management official" shall not include chiefs of mission, principal officers and their deputies, and administrative and personnel officers abroad.

3 FAM 5115.3 Management Officials and Confidential Employees

(TL:PER-238; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

"Management officials" and "confidential employees" of the Department may join or remain members of any labor organization, but may not participate in the management of the organization or act in the capacity of an organization representative in the field of labor-management relations during their occu-

pancy of a management official or confidential employee position, or for two years thereafter.

3 FAM 5116 SCOPE

3 FAM 5116.1 Applicability

(TL:PER-368; 04-20-1999)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. These regulations apply to:

(1) All U.S. citizen members of the Service who are employees of the Department, wherever serving; *and*

(2) Civil Service employees of the Department.

b. *These regulations do not apply to Foreign Service national employees or consular agents.*

3 FAM 5116.2 Exclusions of Subdivisions

(TL:PER-238; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

The President may, by Executive Order, exclude any subdivision of the Department from coverage if the President determines that:

(1) The subdivision has as a primary function intelligence, counter-intelligence, investigative, or national security work; *and*

(2) The provisions of chapter 10 of the Act or chapter 71 of 5 U.S.C. cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

3 FAM 5116.3 Suspension of Provisions of the Act or CSRA

(TL:PER-238; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

The President may, by Executive Order, suspend any provision of chapter 10 of the Act or chapter 71 of the CSRA with respect to any post, bureau, office, or activity of the Department, if the President determines in writing that the suspension is necessary in the interest of national security because of an emergency.

3 FAM 5116.4 Availability of Grievance Procedures

(TL:PER-368; 04-20-1999)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

Exclusions under 3 FAM 5116.2, or suspension under 3 FAM 5116.3, shall not operate to deny access by a member of the Foreign Service to the grievance procedures established under chapter 11 of the Act.

3 FAM 5116.5 Exclusive Representative's Right to Appear at Grievance Proceedings

(TL:PER-238; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

The exclusive representative has the right to appear at grievance proceedings when it is representing a grievant, or when the grievant is a member of a bargaining unit represented by the exclusive representative.

3 FAM 5117 EMPLOYEES' REPRESENTATION

(TL:PER-368; 04-20-1999)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. Only one organization can be recognized as exclusive representative for Foreign Service employees in the Department. Therefore, the Foreign Service employees of the Department constitute a single and separate worldwide bargaining unit.

b. Civil Service employees constitute separate bargaining units.

c. Excluded from all bargaining units are:

(1) Employees engaged in personnel work in other than a purely clerical capacity;

(2) Employees engaged in criminal or national security investigations or audit of department programs and operations, including all employees of the Office of Inspector General;

(3) Civil Service supervisors;

(4) Management officials; and

(5) Confidential employees.

d. The Department shall accord exclusive recognition to a labor organization if the organization has been selected as the representative in a secret ballot election, by a majority of the employees in the bargaining unit who cast valid ballots in the election.

3 FAM 5118 MANAGEMENT RIGHTS

(TL:PER-238; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. Nothing in these regulations shall affect the authority of any management official of the Department, in accordance with applicable law:

(1) To determine the mission, budget, organization, and internal security practices of the Department, and the number of individuals in the Service or in the Department;

(2) To hire, assign, direct, layoff, and retain Civil Service or Foreign Service employees, to suspend, remove, or take other disciplinary action against such individuals, to determine the number of members of the Service to be promoted and to remove the name of or delay the promotion of any member, and to reduce Civil Service employee's grade or pay;

(3) To assign work, to make determinations with respect to contracting out, and to determine the personnel by which the operations of the Department shall be conducted;

(4) To fill positions from any appropriate source;

(5) To determine the need for uniform Foreign Service personnel policies and procedures between or among the agencies to which this subchapter applies;

(6) To conduct reductions in force and prescribe regulations for separation of employees;

(7) To assign work, to make determinations with respect to contracting out, and to determine the personnel by which Department operations are conducted;

(8) To fill positions from any appropriate source (Foreign Service); and

(9) To take whatever actions may be necessary to carry out the mission of the Department during emergencies.

b. Nothing in this subchapter shall preclude the Department and the exclusive representative from negotiating:

(1) At the discretion of the agency, on the numbers, grades, or classes of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) Procedures which management officials of the Department will observe in exercising any function under this subchapter; or

(3) Appropriate arrangements for employees adversely affected by the exercise of any function under this chapter.

3 FAM 5119 LABOR MANAGEMENT PARTNERSHIP

(TL:PER-368; 04-20-1999)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

See 3 FAM 5119 *Exhibit 5119*.

3 FAM 5119 Exhibit 5119

Executive Order 12871 of October 1, 1993

(TL:PER-368; 04-20-1999)

Labor-Management Partnerships

The involvement of Federal Government employees and their union representative is essential to achieving the National Performance Review's Government reform objectives. Only by changing the nature of Federal labor-management relations so that managers, employees, and employees' elected union representatives serve as partners will it be possible to design and implement comprehensive changes necessary to reform Government. Labor-management partnerships will champion change in Federal Government agencies to transform them into organizations capable of delivering the highest quality services to the American people.

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and in order to establish a new form of labor-management relations throughout the executive branch to promote the principles and recommendations adopted as a result of the National Performance Review, it is hereby ordered:

Section 1. THE NATIONAL PARTNERSHIP COUNCIL. (a) *Establishment and Membership.* There is established the National Partnership Council ("Council"). The Council shall comprise the following members appointed by the President:

- (1) Director of the Office of Personnel Management ("OPM");
- (2) Deputy Secretary of Labor;
- (3) Deputy Director for Management, Office of Management and Budget;
- (4) Chair, Federal Labor Relations Authority;
- (5) Federal Mediation and Conciliation Director;
- (6) President, American Federation of Government Employees, AFL-CIO;
- (7) President, American Federation of Federal Employees;

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(8) President, National Treasury Employees Union;

(9) Secretary-Treasury of the Public Employees Department, AFL-CIO; and

(10) A deputy Secretary or other officer with department- or agency-wide authority from two executive departments or agencies (hereafter collectively “agency”), not otherwise represented on the Council.

Members shall have 2-year terms on the Council, which may be extended by the President.

(b) *Responsibilities and Functions.* The Council shall advise the President on matters involving labor-management relations in the executive branch. Its activities shall include:

(1) supporting the creation of labor-management partnerships and promoting partnership efforts in the executive branch, to the extent permitted by law;

(2) proposing to the President by January 1994 statutory changes necessary to achieve the objectives of this order, including legislation consistent with the National Performance Review’s recommendations for the creation of a flexible and responsive hiring system and the reform of the General Schedule classification system;

(3) collecting and disseminating information about, and providing guidance on, partnership efforts in the executive branch, including results achieved, to the extent permitted by law;

(4) utilizing the expertise of individuals both within and outside the Federal Government to foster partnership arrangements; and

(5) working with the President’s Management Council toward reform consistent with the National Performance Review’s recommendations throughout the executive branch.

(c) *Administration.* (1) The President shall designate a member of the Council who is a full-time Federal employee to serve as Chairperson. The responsibilities of the Chairperson shall include scheduling meetings of the Council.

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(2) Council shall seek input from nonmember Federal agencies, particularly smaller agencies. It may, from time to time, invite experts from the private and public sectors to submit information. The Council shall also seek input from companies, nonprofit organizations, State and local governments, Federal Government employees, and customers of Federal Government services, as needed.

(3) To the extent permitted by law and subject to the availability of appropriations, OPM shall provide such facilities, support, and administrative services to the Council as the Director of OPM deems appropriate.

(4) Members of the Council shall serve without compensation for their work on the Council, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law, for persons serving intermittently in Government service.

(5) All agencies shall, to the extent permitted by law, provide to the Council such assistance, information, and advice as the Council may request.

(d) *General.* (1) I have determined that the Council shall be established in compliance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2).

(2) Notwithstanding any other executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, that are applicable to the Council, shall be performed by the Director of OPM, in accordance with guidelines and procedures issued by the Administrator of General Services.

(3) The Council shall exist for a period of 2 years from the date of this order, unless extended.

(4) Members of the Council who are not otherwise officers or employees of the Federal Government shall serve in a representative capacity and shall not be considered special Government employees for any purpose.

Sec. 2. IMPLEMENTATION OF LABOR-MANAGEMENT PARTNERSHIPS THROUGHOUT THE EXECUTIVE BRANCH. The head of each agency subject to the provisions of chapter 71 of title 5, United States Code shall:

(a) create labor-management partnerships by forming labor-management committees or councils at appropriate levels, or adapting existing councils or committees if such groups exist, to help reform Government;

(b) involve employees and their union representatives as full partners with management representatives to identify problems and craft solutions to better serve the agency's customers and mission;

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(c) provide systematic training of appropriate agency employees (including line managers, first line supervisors, and union representatives who are Federal employees) in consensual methods of dispute resolution, such as alternative dispute resolution techniques and interest-based bargaining approaches;

(d) negotiate over the subjects set forth in 5 U.S.C. 7106(b)(1), and instruct subordinate officials to do the same; and

(e) evaluate progress and improvements in organizational performances resulting from the labor-management partnerships.

Sec. 3. ADMINISTRATIVE OR JUDICIAL REVIEW. This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

/s/ William J. Clinton

THE WHITE HOUSE,
October 1, 1993.